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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2018–0005; Notice No. 174]

RIN: 1513–AC38

Proposed Establishment of the Upper Hudson Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 1,500-square mile “Upper Hudson” viticultural area in all or portions of Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties in New York. The proposed viticultural area does not lie within, nor does it contain, any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please send your comments on this proposed rule to one of the following addresses:

- *Internet:* <http://www.regulations.gov> (via the online comment form for this proposed rule as posted within Docket No. TTB–2018–0005 at “Regulations.gov,” the Federal e-rulemaking portal);

- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Box 12, Washington, DC 20005; or

- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Suite 400, Washington, DC 20005.

See the **Public Participation** section of this proposed rule for specific instructions and requirements for submitting comments, and for information on how to request a public hearing or view or request copies of the petition and supporting materials.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Box 12, Washington, DC 20005; phone (202) 453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels

provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120-01, dated December 10, 2013, (superseding Treasury Order 120-01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists of the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps

consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Upper Hudson Petition

TTB received a petition from Andrew and Kathleen Weber, owners of Northern Cross Vineyard, on behalf of local grape growers and vintners, proposing to establish the approximately 1,500-square mile “Upper Hudson” AVA. Nineteen commercial vineyards, covering approximately 67.5 acres, are distributed across the proposed AVA. According to the petition, several vineyard owners are planning to expand their vineyards by a total of 14 additional acres in the near future, and 4 new vineyards are also planned. All 19 of the vineyards within the proposed AVA also have attached wineries.

The distinguishing feature of the proposed Upper Hudson AVA is its climate. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this proposed rule comes from the petition for the proposed Upper Hudson AVA and its supporting exhibits.

Name Evidence

The proposed Upper Hudson AVA is located along the Hudson River. According to the petition, the term “Upper Hudson” is used to describe the non-tidal portion of the river above the Federal Dam in Troy, New York. For example, the U.S. Geological Survey has a webpage with information about the Hudson River watershed in the region of the proposed AVA titled “USGS Water Resources Links for the Upper Hudson.”¹ The petition also included a “USA Today” article about kayaking trips within the region that includes the proposed AVA and is titled “Kayaking in the Upper Hudson.”²

¹ <http://water.usgs.gov/lookup/getwatershed?02020001>.

² <http://traveltips.usatoday.com/kayaking-upper-hudson-61158.html>.

The petition included a listing of organizations and businesses within the proposed AVA that use the name “Upper Hudson.” The Phi Beta Kappa fraternal organization³ and the Editorial Freelancers Association⁴ both have chapters within the proposed boundaries of the AVA referred to as “Upper Hudson.” The Upper Hudson Green Party and the Upper Hudson Peace Action are two other organizations located within the proposed AVA. The Upper Hudson Research Center provides laboratory and field station facilities within the proposed AVA for researchers of Rensselaer Polytechnic Institute who study freshwater habitats. Medical facilities within the proposed AVA include Upper Hudson Dermatology and Upper Hudson Primary Care. Finally, Upper Hudson Farm Direct provides deliveries of fresh produce from farms within the region of the proposed AVA.

Boundary Evidence

The proposed Upper Hudson AVA includes all or portions of Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties in New York. The proposed boundaries follow a series of roads and rivers. To the east of the proposed AVA are the foothills of the Taconic Mountains, which have higher elevations and cooler growing season temperatures than the proposed AVA. To the south of the proposed AVA is the region known as the Lower Hudson River Valley, which includes the established Hudson River Region AVA (27 CFR 9.47). This region has warmer annual temperatures than the proposed AVA, due to the tidal nature of the lower portion of the Hudson River. To the west of the proposed AVA are the Adirondack and

³ <http://uhpbk.org>.

⁴ www.the-efa.org/chp/?chp=upperhudson.

Allegheny Mountains, which have higher elevations and cooler annual temperatures than the proposed AVA. To the north of the proposed AVA are the valleys of Lake George and Lake Champlain, where growing season temperatures are generally warmer due to the moderating effects of the lakes.

Distinguishing Features

The distinguishing feature of the proposed Upper Hudson AVA is its climate. The petition included information on the USDA plant hardiness zones and the growing degree day accumulations (GDDs)⁵ for the proposed AVA and the surrounding areas.

Plant Hardiness Zones

The USDA plant hardiness zone map included in the petition divides the United States into zones based on the average annual minimum winter temperature. The map is divided into 13 zones, from the coolest zone 1 to the warmest zone 13. Each zone has a 10-degree Fahrenheit (F) range and is further divided into two 5-degree F sub-zones, which are designated “a” and “b”. According to the map, the proposed Upper Hudson AVA falls into zones 5a and 5b. Average minimum temperatures in these zones range from -20 to -15 degrees F. The petition states that these average minimum winter temperatures are cold enough to damage or even kill many varieties of grapes. Therefore, vineyard owners within the proposed AVA plant cold-hardy varieties such as

⁵ In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual growing degree days (GDDs), defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth. See Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 2d ed. 1974), pages 61–64.

Marquette, Frontenac, La Crescent, and La Crosse, which have been developed to withstand temperatures as low as -30 degrees.

The plant hardiness zone map shows that the regions to the immediate east and west of the proposed Upper Hudson AVA are also classified as zones 5a and 5b. However, the Adirondack and Allegheny mountains farther to the west and northwest of the proposed AVA are classified as zones 3b, 4a, and 4b, meaning that average minimum temperatures in the region are between -35 and -25 degrees F.

The region south of the proposed AVA, which includes the established Hudson River Region AVA, is classified as zones 6a and 6b, with average minimum temperatures between -10 and 0 degrees F. According to the petition, grape varieties commonly grown within the established Hudson River Region AVA include Seyval Blanc, Baco Noir, Cabernet Franc, Pinot Noir, Vignoles, and Traminette. The petition states that according to research conducted at several universities, most of these varieties are cold hardy to -15 degrees F, while Pinot Noir is cold hardy only to -8 degrees F. Because winter temperatures within the proposed Upper Hudson AVA regularly drop as low as -20 degrees, these varieties would not be suitable for growing within the proposed AVA.

Growing Degree Days

The petition included a graph showing the average GDD accumulations for 19 locations within the proposed AVA and the surrounding areas. Six of these locations are within the proposed AVA, and the remainder are from the surrounding areas. The graph may be viewed in its entirety on [Regulations.gov](https://www.regulations.gov)

as part of the public docket, Docket No. TTB–2018–0005. The following table lists only the locations in the graph for which at least 3 years of data was available, as well as the location’s direction relevant to the proposed AVA.

Locations with GDD Data Available from 2012-2014	
Location	Direction from Proposed AVA
Ticonderoga, NY	North
Rutland, VT	Northeast
East Dorset, VT	East
North Adams, MA	Southeast
Pittsfield, MA	Southeast
Castleton, NY	South
Hudson, NY	South
Cobleskill, NY	Southwest
North Blenheim, NY	Southwest
Gloversville, NY	West
Bennington, VT	West
Clifton Park, NY	Within
Melrose, NY	Within
Schoharie, NY	Within
Guilderland, NY	Within
Glens Falls, NY	Within

The graph included in the petition shows that the locations within the proposed AVA achieved GDD accumulations ranging between 2,300 and 2,700. Guilderland, Melrose, Clifton Park, and Schoharie all had GDD accumulations of over 2,500, which is generally considered to be the minimum GDD accumulations needed to ripen most varieties of grapes⁶. Glens Falls, which is located at the northernmost boundary of the proposed AVA, is shown as having slightly fewer than 2,500 GDDs. According to the petition, the locations within the proposed AVA reach 2,500 GDDs late in September, meaning that the fruit typically has only a few weeks to continue maturing before the first frost sets in.

⁶ See Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 2d ed. 1974), pages 61–64, 143.

The petition states that, as a result, wineries often must work with tart fruit and remove the tartness as part of the winemaking process through the use of Malolactic fermentation, pH adjustment, or residual sugars.

By contrast, the graph shows that the locations to the north and south of the proposed AVA have GDD accumulations over 2,700. Ticonderoga is located on the shore of Lake Champlain, and Hudson and Castleton are both located along the tidal portion of the Hudson River. Hudson, the southernmost location shown on the graph, has the highest GDD accumulation of any location depicted in the graph, with just over 2,900. According to the petition, the warming effects of both Lake Champlain and the tidal portion of the Hudson River contribute to the higher GDD accumulations in the regions north and south of the proposed AVA. The graph also shows that these locations all reach 2,500 GDDs earlier in September than the locations within the proposed AVA. The petition states that grapes in these warmer regions have more time to mature before the first frost, so the grapes “have the tartness removed in the vineyard.”

The remaining locations, to the east, southeast, southwest, and west of the proposed Upper Hudson AVA, all have lower GDD accumulations than the proposed AVA. Of these locations, North Adams and Bennington have the highest GDD accumulations, with just over 2,300. Gloversville had the lowest, with just over 1,700. The petition shows that viticulture in these regions would be difficult because the GDD accumulations would not reach the levels necessary to reliably ripen most varieties of grapes.

Summary of Distinguishing Features

In summary, the evidence provided in the petition indicates that the climate of the proposed Upper Hudson AVA distinguishes it from the surrounding regions in each direction. The proposed AVA has lower GDD accumulations than the regions to the north and south, which benefit from the warming influence of Lake Champlain and the tidal portion of the Hudson River. The region to the south is also classified in a warmer plant hardiness zone. The proposed AVA has higher GDD accumulations than the regions to the east and west and is also classified in a warmer plant hardiness zone than the region to the west. As a result of its climate, the proposed Upper Hudson AVA is suitable for growing cold-hardy grape hybrids, but not the grape varieties that are commonly grown farther south within the established Hudson River Region AVA.

TTB Determination

TTB concludes that the petition to establish the approximately 1,500-square mile Upper Hudson AVA merits consideration and public comment, as invited in this proposed rule.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, "Upper Hudson," will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, if this proposed rule is adopted as a final rule, wine bottlers using the name "Upper Hudson" in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, soils, climate, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Upper Hudson AVA on wine labels that include the term “Upper Hudson,” as discussed above under **Impact on Current Wine Labels**, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the AVA.

Submitting Comments

You may submit comments on this proposed rule by using one of the following three methods (please note that TTB has a new address for comments submitted by U.S. Mail):

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this proposed rule within Docket No. TTB–2018–0005

on “Regulations.gov,” the Federal e-rulemaking portal, at <http://www.regulations.gov>. A direct link to that docket is available under Notice No. 174 on the TTB Web site at <https://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on the “Help” tab.

- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Box 12, Washington, DC 20005.

- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 174 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly indicate if you are commenting on your own behalf or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity’s name, as well as your name and position title. If you comment via Regulations.gov, please enter the entity’s name in the “Organization” blank of the online comment

form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this proposed rule, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2018–0005 on the Federal e-rulemaking portal, Regulations.gov, at <http://www.regulations.gov>. A direct link to that docket is available on the TTB Web site at <https://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 174. You may also reach the relevant docket through the Regulations.gov search page at <http://www.regulations.gov>. For information on how to use Regulations.gov, click on the site's "Help" tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this proposed rule, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or any similarly-sized documents that may be included as part of the AVA petition. Contact TTB's information specialist at the above address or by telephone at (202) 453-2265 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this proposed rule.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Subpart C is amended by adding § 9._____ to read as follows:

§ 9._____ Upper Hudson.

(a) *Name.* The name of the viticultural area described in this section is “Upper Hudson”. For purposes of part 4 of this chapter, “Upper Hudson” is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:100,000 scale topographic maps used to determine the boundary of the Upper Hudson viticultural area are titled:

- (1) Glens Falls, New York–Vermont, 1989;
- (2) Albany, New York–Massachusetts–Vermont, 1989;
- (3) Amsterdam, New York, 1985; photoinspected 1990; and
- (4) Gloversville, New York, 1985; photoinspected 1992;

(c) *Boundary.* The Upper Hudson viticultural area is located in Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington

Counties in New York. The boundary of the Upper Hudson viticultural area is as described below:

(1) The point of the beginning is on the Glens Falls map at the intersection of U.S. Highway 9 and State Highway 32, in Glens Falls. From the beginning point, proceed east on State Highway 32 to its intersection with State Highway 254; then

(2) Proceed southeasterly along State Highway 254 to its intersection with U.S. Highway 4 in Hudson Falls; then

(3) Proceed south along U.S. Highway 4 to its intersection with State Highway 197 in Fort Edward; then

(4) Proceed east, then southeast along State Highway 197 to its intersection with State Highway 40 in Argyle; then

(5) Proceed southeast in a straight line to the intersection of State Highway 29 and State Highway 22 in Greenwich Junction; then

(6) Proceed south along State Highway 22, crossing onto the Albany map, to the highway's intersection with State Highway 7 in Hoosick; then

(7) Proceed southwest along State Highway 7, crossing the Hudson River, to the highway's intersection with State Highway 32 in Green Island; then

(8) Proceed south on State Highway 32 to its intersection with U.S. Highway 20 in Albany; then

(9) Proceed west on U.S. Highway 20 its intersection with U.S. Highway 9; then

(10) Proceed southwest along U.S. Highway 9 to its intersection with State Highway 443; then

(11) Proceed southwest, then westerly along State Highway 443, crossing onto the Amsterdam map, to the highway's intersection with an unnamed state highway known locally as State Highway 30 in Vroman Corners; then

(12) Proceed northwesterly along State Highway 30 to its intersection with State Highway 30A in Sidney Corners; then

(13) Proceed north along State Highway 30A , crossing over the Mohawk River, to the highway's intersection with State Highway 5 in Fonda; then

(14) Proceed east along State Highway 5 to its intersection with State Highway 67 in Amsterdam; then

(15) Proceed east along State Highway 67 to its intersection with an unnamed light-duty road known locally as Morrow Road; then

(16) Proceed northeast in a straight line, crossing over the southeastern corner of the Gloversville map and onto the Glens Falls map, to the point where Daly Creek empties into Great Sacandaga Lake; then

(17) Proceed northeast, then east along the southern shore of Great Sacandaga Lake to its confluence with the Hudson River in the town of Lake Luzerne; then

(18) Proceed south, then easterly along the southern bank of the Hudson River to its intersection with U.S. Highway 9 in South Glens Falls; then

(19) Proceed northwest along U.S. Highway 9, crossing the Hudson River, and returning to the beginning point.

Signed: November 30, 2017.

John J. Manfreda

Administrator.

Approved: March 30, 2018.

Timothy E. Skud

*Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).*

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